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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 ROSA E. RANGEL,

10 Plaintiff,

11 v.

12 FEDERAL HOME LOAN MORTGAGE
CORP. and LEHMAN BROTHERS,

13 Defendants.

Case No. 2:13-cv-00536-APG-NJK

**ORDER GRANTING MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN
BE GRANTED**

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15 Currently before the Court is Defendant Federal Home Loan Mortgage Corp.'s
16 ("Defendant") Motion to Dismiss Failure to State a Claim Upon Which Relief Can Be Granted.
17 (ECF#5.)

18 **BACKGROUND**

19 In May 2006, Plaintiff Rosa Rangel ("Plaintiff"), along with her husband Ismael Rangel
20 (collectively, "Borrowers"), purchased the real property located at 1621 Linn Lane, Las Vegas,
21 NV 89156 ("Property"). (ECF#1-1 at 8.) Plaintiff financed this purchase through two mortgage
22 loans ("Loans") from Meridias Capital, Inc. (See First Deed of Trust ("First DOT") ECF#6 at 6;
23 and Second Deed of Trust ("Second DOT") ECF#6 at 26.) Only the First DOT is at issue in this
24 case. (See Complaint, ECF#1 at 9, ¶ 4(2) (identifying only the recording number corresponding
25 to the First DOT)). Under the First DOT, Fidelity National Title acted as trustee, while Mortgage
26 Electronic Registration Systems, Inc. ("MERS") was the beneficiary. (ECF#6 at 6.) Though it is
27 unclear from the pleadings, at some point before February 16, 2010, the Borrowers apparently
28 defaulted on their mortgage obligation, resulting in a Notice of Default and Election to Sell being

1 recorded against the Property on that date. (ECF#6 at 41.) On March 23, 2010, Trustee Corps
 2 was substituted as trustee under the First DOT. (ECF#6 at 45). On March 25, 2010, MERS
 3 assigned its interest under the First DOT to Wells Fargo Bank, N.A. ("Wells Fargo"). (ECF#6 at
 4 47.)¹

5 On February 29, 2013, Plaintiff sued Defendants in Nevada state court (Case No. A-13-
 6 677471-C) seeking damages and equitable relief. (ECF#1). The suit was subsequently removed
 7 to this Court. Plaintiff asserts two claims in her Complaint: intentional misrepresentation and
 8 negligent misrepresentation. (ECF#1 at 9, ¶ 3.) Plaintiff also seems to argue that her Loan debt
 9 was satisfied because her mortgage was pooled and securitized. (ECF#1 at 9, ¶¶ 4(2) and 4(3).)
 10 Plaintiff asks for "reconveyance of [the Property] free of levy and lien, and equitable relief of
 11 \$260,000.00 plus incurred legal fees." (ECF#1 at 9, ¶ 5.)

12 On July 23, 2012, Defendant filed a Motion to Dismiss. ("Motion"). (ECF#5.) For the
 13 reasons discussed below, the Court now grants Defendant's Motion.

14 15 DISCUSSION

16 A complaint must provide "[a] short and plain statement of the claim showing that the
 17 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp v. Twombly*, 550 U.S.
 18 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more
 19 than labels and conclusions" or a "formulaic recitation of the elements of a cause of action."
 20 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286
 21 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550
 22 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
 23 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S. Ct. at 1949 (internal
 24 citation omitted).

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 27 ¹ Although Defendants do not provide the Court with a link in the chain of assignments from
 28 Wells Fargo to Defendants, the Court nevertheless accepts as true Plaintiff's allegations that at
 some point, Lehman Brothers became the beneficiary under the Deed of Trust, and Defendant
 became the trustee under the Deed of Trust. (ECF#1 at 9, ¶ 4(2).)

1 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
 2 when considering a motion to dismiss. First, the court must accept as true all well-pled factual
 3 allegations in the complaint; however, legal conclusions are not entitled to the assumption of
 4 truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by
 5 conclusory statements, do not suffice. *Id.* at 1949. Second, the Court must consider whether the
 6 factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is
 7 facially plausible when the complaint alleges facts that allow the court to draw a reasonable
 8 inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where the
 9 complaint does not permit the court to infer more than the mere possibility of misconduct, the
 10 complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal
 11 quotation marks omitted). When the claims in a complaint have not crossed the line from
 12 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

13 “Generally, a district court may not consider any material beyond the pleadings in ruling
 14 on a Rule 12(b)(6) motion. ... However, material which is properly submitted as part of the
 15 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
 16 *& Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir.1990) (citations omitted). Similarly, “documents
 17 whose contents are alleged in a complaint and whose authenticity no party questions, but which
 18 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion
 19 to dismiss” without converting the motion to dismiss into a motion for summary judgment.
 20 *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994).

21 A. Quiet Title

22 Although Plaintiff has not expressly pled a claim for quiet title, the Court infers that
 23 Plaintiff is asserting that claim based on her vague allegations and prayer for relief. Specifically,
 24 Plaintiff seems to claim that her debt under the Note and Deed of Trust was satisfied because her
 25 mortgage loan was pooled and securitized. (ECF#1 at 9, ¶¶ 4(2) and 4(3).) Her request for
 26 “reconveyance of [the Property] free of levy and lien” seems like a demand for quiet title. (ECF#1
 27 at 9, ¶ 5). “A quiet title action requests a judicial determination of all adverse claims to disputed
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1 property.” 65 Am. Jur 2d. Quieting Title and Determination of Adverse Claims § 1. In Nevada,
2 “[a]n action may be brought by any person against another who claims an estate or interest in real
3 property, adverse to him, for the purpose of determining such adverse claim.” NRS § 40.010.

4 The burden of proof in a quiet title action rests with the plaintiff to prove good title in
5 herself. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 918 P.2d 314, 318 (Nev.1996).
6 Thus, in order to obtain title to the Property “free of levy and lien” as Plaintiff requests, Plaintiff
7 must prove that the Deed of Trust lien has been properly extinguished—that is, by payment of the
8 underlying Loan or by operation of law. Plaintiff’s Complaint does not make out a plausible case
9 for either scenario.

10 Plaintiff fails to allege that she paid off her Loan; rather, she apparently defaulted on the
11 Loan by failing to make monthly payments at some point prior to February 16, 2010. (ECF#6 at
12 41.) Plaintiff vaguely suggests in her Complaint that the debt was satisfied because the Deed of
13 Trust “was pooled and securitized into [a] securitized trust.” (ECF #1 at 9, ¶ 4(2).) She also
14 claims to have “documentation verifying satisfaction of said [Deed of] Trust.” (*Id.*) Such
15 conclusory allegations, without more, are not sufficient to make out a plausible claim that the debt
16 has been satisfied or extinguished by operation of law. *Iqbal*, 129 S. Ct. at 1949. Therefore,
17 Plaintiff’s demand for conveyance of the Property “free from levy and lien” fails under Rule 8(a).

18 The Court dismisses this claim without prejudice. Plaintiff may attempt to amend her
19 Complaint to include sufficiently detailed factual allegations that the Loan is not in default and
20 that the Deed of Trust has been extinguished as a matter of law.

21 **B. Intentional Misrepresentation**

22 Plaintiff appears to contend that Defendant misrepresented its ownership of the First DOT,
23 (ECF #1-1 at 5, ¶ 4(4) and 4(5).), but makes no allegations regarding Defendant’s
24 misrepresentation regarding its status as trustee under the First DOT. To state a claim for
25 fraudulent misrepresentation in Nevada, a plaintiff must allege that (1) defendant made a false
26 representation; (2) defendant knew or believed the representation to be false; (3) defendant
27 intended to induce plaintiff to rely on the misrepresentation; and (4) plaintiff suffered damages as
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1 a result of his reliance. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1386 (1998).
2 In addition, Rule 9 requires a party to “state with particularity the circumstances constituting
3 fraud.” Fed. R. Civ. P. 9(b). This particularity requires “an account of the time, place, and
4 specific content of the false representations, as well as the identities of the parties to the
5 misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007); *see also Morris v.*
6 *Bank of Nev.*, 886 P.2d 454, 456 n.1 (Nev. 1994).

7 Plaintiff’s claim for misrepresentation fails because it was not pled with specificity as
8 required by Rule 9(b). Nowhere in the Complaint does Plaintiff allege who made the fraudulent
9 statements, when the statements were made, or where they were made. Plaintiff also fails to
10 allege the specific content of the fraudulent statements—her allegations include only broad
11 generalizations. Plaintiff also fails to identify precisely what reliance she placed on the
12 “misrepresentations” such that she is entitled to damages or equitable relief.

13 For example, paragraph 4 of the Complaint alleges that she “had a justified reliance on
14 truthfulness of ownership and proper assignments which was misrepresented by defendant’s
15 account of ownership beneficiary through endorsements, assignments, and Notice of Default.”
16 (ECF#1 at 9, ¶ 4(4).) Plaintiff makes no factual allegation about who, when, or how Defendant
17 intentionally misrepresented its “account of ownership beneficiary.” Instead, Plaintiff seems to
18 allege only that she was somehow misled by her reading of documents purporting to assign the
19 beneficiary’s interest in the Loan to Defendant. Plaintiff fails to indicate what specific content
20 within any of those documents constituted false representations, and how they were false. Even
21 assuming that Plaintiff has a justifiable reliance on the “truthfulness of ownership and proper
22 assignments,” Plaintiff has failed to articulate what damages flow from the alleged untruthfulness
23 of ownership and improper assignments, assuming there were any of either.

24 Moreover, on the basis of the factual allegations in the Complaint, it is difficult to
25 understand how Plaintiff could have justifiably relied to her detriment on any alleged
26 misrepresentations in the loan documents. The first DOT states that it and the Note could “be
27 sold one or more times without prior notice to [Plaintiff].” (ECF#6 at 16, ¶ 20.) Plaintiff signed
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1 the First DOT, thereby accepting any assignment from MERS to a subsequent purchaser of the
2 Note. (ECF#6 at 24.)

3 Similarly, it is difficult to determine how Plaintiff could have justifiably relied on any
4 representations made in connection with the Loan's subsequent pooling and securitization. She
5 was not a party to those subsequent agreements, so no representations could have been made to
6 her. Even if misrepresentations were made in those agreements, Plaintiff has not shown how
7 those misrepresentations caused her any harm. Moreover, if she defaulted on her Loan
8 obligations, the beneficiary under the Deed of Trust could exercise its rights to foreclose. Thus, it
9 is difficult to see how Plaintiff could have suffered any loss due to any misrepresentations
10 contained in those agreements.

11 Because Plaintiff has failed to specifically plead facts sufficient to meet Rule 9(b)'s
12 standard, the Court dismisses Plaintiff's intentional misrepresentation claim, without prejudice.
13 Plaintiff will have one opportunity to amend her Complaint to include sufficiently detailed factual
14 allegations to satisfy Rule 9(b) and demonstrate the who, what, when, where, why and how of her
15 claim for intentional misrepresentation.

16 **C. Negligent Misrepresentation**

17 Plaintiff also nakedly asserts a claim for "negligent misrepresentation." (ECF #1 at 9, ¶3.)
18 This appears to be an alternative claim for relief, as she offers no facts to support this claim, other
19 than those alleged in support of her claim of intentional misrepresentation.

20 In *Barmettler v. Reno Air, Inc.*, the Nevada Supreme Court adopted the definition of
21 negligent misrepresentation from the Restatement (Second) of Torts § 552:

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23 One who, in the course of his business, profession or employment,
24 or in any other action in which he has a pecuniary interest, supplies
25 false information for the guidance of others in their business
26 transactions, is subject to liability for pecuniary loss caused to
27 them by their justifiable reliance upon the information, if he fails to
28 exercise reasonable care or competence in obtaining or
communicating the information.

1 114 Nev. 441, 956 P.2d 1382, 1387 (1998). This federal district recognizes that negligent
2 representation sounds in fraud, triggering the requirement under Rule 9(b) that the circumstances
3 constituting fraud or mistake must be stated with particularity. *See Larson v. Homecomings Fin.,*
4 *LLC*, 680 F. Supp. 2d 1230, 1234 (D. Nev. 2009) (plaintiffs' claim for negligent
5 misrepresentation failed because it was not pled with specificity under Rule 9(b)); *Kennedy v.*
6 *Carriage Cemetery Servs., Inc.*, 727 F. Supp. 2d 925, 931 (D. Nev. 2010); *Weingartner v. Chase*
7 *Home Fin., LLC*, 702 F. Supp. 2d 1276, 1291 (D. Nev. 2010); *G.K. Las Vegas Ltd. P'ship v.*
8 *Simon Prop. Grp., Inc.*, 460 F. Supp. 2d 1222, 1244 (D. Nev. 2006).

9 As discussed above, Plaintiff fails to plead what information Defendant conveyed to her
10 that was false, and how she justifiably relied upon it. Instead, Plaintiff merely alleges an element
11 of the claim: that Plaintiff justifiably relied on the truthfulness of ownership and proper
12 assignments. This does not satisfy the requirements of Rule 9(b), *Iqbal* and *Twombly*. For these
13 reasons, the claim is dismissed without prejudice.

14 15 CONCLUSION

16 For the foregoing reasons, Defendant's Motion to Dismiss (ECF#5) is **GRANTED**.
17 Plaintiff's Complaint (ECF#1 at 8) is **DISMISSED WITHOUT PREJUDICE**. Plaintiff shall
18 have 30 days from the date of entry of this Order in which to amend her Complaint to assert
19 sufficient facts to satisfy the pleading requirements of Rule 9 and *Iqbal* and *Twombly*. Should
20 Plaintiff not file an Amended Complaint by that date, this case will be closed.
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22 DATED this 5th day of November, 2013.

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24 
25 ANDREW P. GORDON
26 UNITED STATES DISTRICT JUDGE
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